

SCOTT O. MERCER (3834)
SCOTT S. BRIDGE (12039)
KESLER & RUST
68 South Main Street, 2nd Floor
Salt Lake City, UT 84101
Telephone: (801) 532-8000
som@keslerrust.com
sbridge@keslerrust.com
Attorneys for Citywide Home Loans, a Utah Corporation

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

TRAVIS J. JOHNSON,

Plaintiff,

v.

CITYWIDE HOME LOANS; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS;
and JOHN DOES 1-10;

Defendants.

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

Civil No. 2:09-cv-945

Judge Ted Stewart

Defendant Citywide Home Loans, a Utah corporation (hereinafter “Citywide”) hereby
submits this memorandum in support of its motion to dismiss.

STATEMENT OF FACTS

1. On October 22, 2009, Plaintiff Travis Johnson (“Plaintiff”) filed his complaint in the above-captioned case. *See* court docket.
2. As of March 1, 2010, none of the defendants have been served with a copy of the summons or complaint. *See* court docket.

ARGUMENT

Federal R. Civ. Pro. 4(m) states as follows: “If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant...”

Here, Plaintiff had 120 days from October 22, 2009, to serve Citywide in this case. The 120 day period expired on February 19, 2010. To date, Plaintiff has failed to serve Citywide, or any other defendant, within the 120 day period as required by rule. As a result, the court must dismiss the action as against Citywide.

CONCLUSION

For the foregoing, Citywide’s motion to dismiss should be granted.

DATED this 2nd day of March, 2010.

KESLER & RUST

/s/ Scott S. Bridge

Scott O. Mercer
Scott S. Bridge
Attorneys for Citywide Home Loans

CERTIFICATE OF SERVICE

I hereby certify that I caused to be delivered by the method indicated below a true and correct copy of **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS** this 2nd day of March, 2010.

/s/ Scott S. Bridge

VIA CM/ECF

Robert G. Culas
9730 South 700 East, Ste 207
Sandy, Utah 84070
rculas@culaslaw.com
Attorneys for Plaintiff